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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

DEREK WASSON, Plaintiff, vs. UNITED STATES OF AMERICA, Defendant.	ANSWER Case No. 2:17-cv-00931-CW Judge Clark Waddoups
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The United States answers Plaintiff's First Amended Complaint as follows:

First Defense

The United States responds to the numbered paragraphs of Plaintiff's First Amended Complaint as follows:

1-2. Admitted.

3. The United States denies that it is liable for acts or omissions of Dr. Ambati except to the extent that the acts or omissions were negligent or wrongful and within the scope of Dr. Ambati's employment. The United States admits the remaining allegations of paragraph 3.

4. The United States admits that the employees of the Department of Veterans Affairs (VA) involved in the procedures and treatment of Plaintiff alleged in the First Amended

Complaint were acting within the scope of their employment. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of paragraph 4.

5. Admitted.

6. The United States incorporates its responses to paragraphs 1-5 above.

7-8. The United States lacks sufficient information to form a belief as to the truth of paragraphs 7-8.

9. The United States admits that Plaintiff presented an administrative claim to the VA that was dated April 19, 2016, and received April 22, 2016, and that Plaintiff seeks damages resulting from allegedly negligent conduct of one or more VA employees.

10. Admitted.

11. The United States lacks sufficient information to form a belief as to the truth of paragraph 11.

12. The United States admits the allegations of paragraph 12 except that the United States lacks sufficient information to form a belief as to the truth of the allegation that the encounter with Dr. Ambati on January 20, 2016, occurred at the Moran Eye Center.

13-18. Admitted.

19. The United States lacks sufficient information to form a belief as to the truth of paragraph 19.

20. The United States incorporates its responses to paragraphs 1-19 above.

21-23. The United States lacks sufficient information to form a belief as to the truth of paragraphs 21-23.

Second Defense

Plaintiff's Complaint fails to state a claim on which relief can be granted.

Third Defense

The United States may be held liable only for the percentage of fault, if any, attributed to the United States. UTAH CODE ANN. §§ 78B-5-818, -820.

Fourth Defense

Plaintiff's claim is barred or his damages must be reduced to the extent that his damages were caused by the fault of Plaintiff. UTAH CODE ANN. §§ 78B-5-818, -819, -820.

Fifth Defense

The United States is entitled to an apportionment of fault among Plaintiff, the United States, and any non-party as to whom there is a factual and legal basis to allocate fault. UTAH CODE ANN. § 78B-5-818.

Sixth Defense

Any award of future damages is subject to the periodic-payment provisions of UTAH CODE ANN. § 78B-3-414.

Seventh Defense

Plaintiff's damages, if any, must be reduced by the amounts paid or otherwise available to Plaintiff from all collateral sources. UTAH CODE ANN. § 78B-3-405.

Eighth Defense

Any award of noneconomic damages is subject to the limitations in UTAH CODE ANN. § 78B-3-410.

Ninth Defense

Plaintiff's claims and damages are limited by the provisions of the Utah Healthcare Malpractice Act. UTAH CODE ANN. §§ 78B-3-401, *et seq.*

Tenth Defense

Plaintiff is not entitled to recover damages to the extent that the evidence may show that Plaintiff failed to mitigate his damages.

Eleventh Defense

The United States is not liable for prejudgment interest. 28 U.S.C. § 2674.

Twelfth Defense

Plaintiff's damages, if any, are limited to the damages alleged in his administrative claim. 28 U.S.C. § 2675(b).

Prayer for Relief

The United States requests judgment dismissing Plaintiff's First Amended Complaint with prejudice and awarding the United States its costs of suit and such other relief as may be equitable.

DATED this 30th day of October, 2017.

JOHN W. HUBER
United States Attorney

/s/ Jeffrey E. Nelson
JEFFREY E. NELSON
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office, and that a copy of the foregoing **ANSWER** was served through the Court's ECF system to all parties named below this 30th day of October, 2017.

Colin P. King
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/s/ Jeffrey E. Nelson
U.S. Attorney's Office